IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 09..4..2007

Coram

The Hon'ble Mr. Justice K.CHANDRU

W.P. Nos.19992 of 1998, 703 and 704
of 1999, 820, 1798 and 6326 of 2007
and
M.P.Nos.1 and 2 of 2007 in W.P.No.820 of 2007, M.P.No.1 of 2007 in W.P.No.1798 of 2007 and M.P.No.1 of 2007 in W.P.No.6326 of 2007

W.P.No.19992 of 1998:

Dr.M.Vinobaji ... Petitioner

vs.

1. Central Registrar of Co-op. Societies
Krishi Bhavan
Dr.Rajendra Prasad Road
New Delhi - 110 001

2. The Joint Registrar of Co-op. Societies
Chennai Region
Saidapet
Chennai - 15

3. The Indian Medical Practitioners'
Co-op. Pharmacy and Stores Ltd.
Rep. by its Secretary
34-37 Dr.Muthulakshmi Road
Thiruvanmiyur
Chennai - 41

4. Dr.S.Sivanandam

5. K.M.Shanmugam

6. Dr.Gills Leonard ... Respondents

R.4 impleaded as per order dated 27.1.99 in WMP.31138/98
R.5 impleaded as per order dated 2.7.2001 in WMP.12152/01
R.6 impleaded as per order dated 2.7.2001 in WMP.12153/01

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Prayer:

Petition filed under Article 226 of the Constitution of India seeking for issuance of writ of certiorari calling for the records pertaining to the proceedings of the first respondent bearing No.L-11016/23/87-L & M dated 18.01.1993 and quash the same.

For Petitioner : Mr.Nagasayanam

For Respondents 1&2 : Mr.P.Wilson,
Asst. Solicitor General of India

For Respondent 3 : Mr.F.B.Benjamin George

For Respondent 4 : Ms.M.Sakkira Banu

For Respondent 5 : Mr.L.Rober Kennedy Ramesh

For Respondent 6 : Mr.S.Velayutham

W.P.Nos.703 and 704 of 1999:

Dr.V.Thamilalagan... Petitioner in W.P.No.703 of 1999

Dr.P.M.Rajagopalan... Petitioner in W.P.No.704 of 1999

vs.

1. Central Registrar of Co-op. Societies
Krishi Bhavan
Dr.Rajendra Prasad Road
New Delhi - 110 001

2. The Joint Registrar of Co-op. Societies
Chennai Region
Saidapet
Chennai - 15

3. The Board of Directors
by its President Dr.Kumaradas

4. The Indian Medical Practitioners'
Co-op. Pharmacy and Stores Ltd.
Rep. by its Secretary
34-37 Dr.Muthulakshmi Road
Thiruvanmiyur
Chennai - 41

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5. Dr.Kumaradas

6. Dr.A.Anandakumar

7. Dr.S.K.Khadri

8. Dr.M.Abdul Hussain

9. Dr.N.Asai Thambi

10. Dr.P.Tamilmani

11. Dr.G.Jayakumar

12. Dr.(Mrs) K.Velumani

13. Dr.Gills Leonard

14. Dr.D.Radhakrishnamurthy

15. Dr.S.Venkata Raju

16. Dr.P.Pandarinath

17. Dr.G.P.Venmathian

18. Dr.V.Stanley Jones

19. Dr.S.Sivanandam.. Respondents in both W.P.

Prayer:

Petitions filed under Article 226 of the Constitution of India seeking for issuance of writ of certiorari calling for the records pertaining to the certificate of registration of amendment accorded by the first respondent in proceeding No.L.-11016/23/87 - L & M dated 14.01.1993 and the consequential election notification all connected proceedings of the fourth respondent bearing No.GBM No.2/98-99 dated 16.11.1998 pursuant to such amendment and quash the same.

For Petitioner : Mr.A.L.Somayaji, SC
for Mrs.Narmada Sampath

For Respondents 1 : Mr.P.Wilson,
Asst. Solicitor General of India

W.P.No.820 of 2007:

Dr.M.Muthukrishnan ... Petitioner

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Vs.

1. Central Registrar of Co-op. Societies
   Krishi Bhavan
   Dr.Rajendra Prasad Road
   New Delhi - 110 001

2. The Board of Directors
   The Indian Medical Practitioners'
   Co-op. Pharmacy and Stores Ltd.
   by its President Dr.Kumaradas
   Thiruvanmiyur
   Chennai

3. The Indian Medical Practitioners'
   Co-op. Pharmacy and Stores Ltd.
   Rep. by its Secretary
   34-37 Dr.Muthulakshmi Road
   Thiruvanmiyur
   Chennai - 41

4. Dr.Kumaradas

5. Dr.S.K.Khadri

6. Dr.M.Abdul Hussain

7. Dr.P.Tamilmani

8. Dr.G.Jayakumar

9. Dr.(Mrs) K.Velumani

10. Dr.Gills Leonard

11. Dr.D.Radhakrishnamurthy

12. Dr.S.Venkata Raju

13. Dr.P.Pandarinath

14. Dr.G.P.Venmathian

15. Dr.V.Stanley Jones

16. Dr.S.Sivanandam .. Respondents in both W.Ps.

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Prayer:

Petition filed under Article 226 of the Constitution of India seeking for issuance of writ of certiorarified mandamus calling for the records pertaining to the impugned certificate of registration of amendment accorded by the first respondent in proceeding No.L.-11016/23/87 - L & M dated 14.01.1993 and the consequential election notification all connected proceedings of the fourth respondent bearing No.GBM No.2/98-99 dated 16.11.1998 pursuant to such amendment and quash the same and direct the fourth respondent to conduct fresh election.

For Petitioner : Mr.M.Muthappan

For Respondents 1 : Mr.P.Wilson,
Asst. Solicitor General of India

For Respondent 16 : Mr.T.Mohan
for Mr.M.Ravi

W.P.No.1798 of 2007:

Dr.A.Balasubramaniam ... Petitioner

vs.

1. Central Registrar of Co-op. Societies
Krishi Bhavan
Dr.Rajendra Prasad Road
New Delhi - 110 001

2. The Board of Directors
The Indian Medical Practitioners'
Co-op. Pharmacy and Stores Ltd.
by its President Dr.Kumaradas
Thiruvanmiyur
Chennai

3. The Indian Medical Practitioners'
Co-op. Pharmacy and Stores Ltd.
Rep. by its Secretary
34-37 Dr.Muthulakshmi Road
Thiruvanmiyur
Chennai - 41

4. Dr.Kumaradas

5. Dr.P.Pandarinath

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6. Dr.G.P.Venmathian

7. Dr.V.Stanley Jones

8. Dr.M.Abdul Hussain

9. Dr.P.Tamilmani

10. Dr.G.Jayakumar

11. Dr.(Mrs) K.Velumani

12. Dr.Gills Leonard

13. Dr.D.Radhakrishnamurthy

14. Dr.S.Venkata Raju

15. Dr.S.K.Khadri

16. Dr.S.Sivanandam ... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India seeking for issuance of writ of mandamus directing the second respondent to conduct the election to the third respondent society following the rules laid down for election in the Multi State Co-operative Society under the Multi State Co-operative Societies Act 2002 and the Rules framed thereunder within the time.

For Petitioner : Mr.Prabhakar
For Mr.T.Palanivel

For Respondents 1 : Mr.P.Wilson,
Asst. Solicitor General of India

For Respondent 16 : Mr.T.Mohan
for Mr.M.Ravi

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W.P.No.6326 of 2007:

The Indian Medical Practitioners'
Co-op. Pharmacy and Stores Ltd.
Rep. by its Secretary
34-37 Dr.Muthulakshmi Road
Thiruvanmiyur
Chennai - 41 ... Petitioner

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vs.

1. The Commissioner of Police
   Greater Chennai
   Egmore
   Chennai - 8

2. The Deputy Commissioner of Police
   Adayar Range
   Adayar
   Chennai - 20

3. The Assistant Commissioner of Police
   Adayar Range
   Adayar
   Chennai - 20

4. The Inspector of Police
   J-6 Thiruvanmiyur Police Station
   Chennai - 41

5. Labour Progressive Front
   IMPCOPS
   Thiruvanmiyur
   Chennai - 41

6. Dr.V.R.Seshadri ... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India seeking for issuance of writ of mandamus directing the respondents 1 to 3to provide sufficient police protection to the President, the Vice-President and other Board of Directors at the premises of Indian Medical Practitioners' CO-operative Pharmacy and Stores Ltd, 34-37 Kalki Krishnamurthy Salai, Thiruvanmiyur, Chennai - 41, or at any other place to attend and preside over the executive committee meeting and Board of Directors meetings dated 21.02.2007 and 22.02.2007 and all other meetings to be held on subsequent dates.

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For Petitioner : Mr.Krishnappan, SC
for Ms.Swarnalatha

For Respondents 6 : Mrs.A.V.Bharathi

For Respondents 1 to 3 : Mrs.C.K.Vishnu Priya,
Govt. Advocate.

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C O M M O N O R D E R

By the orders of the Honourable Chief Justice, these matters were grouped and posted before this Court.

2. I have heard the learned counsels appearing for the respective parties and have perused the records.

3. All these writ petitions are in a way inter-connected and, therefore, they were heard together. They relate to conduct of elections to the third respondent Society, ie., Indian Medical Practitioners Co-operative Pharmacy and Stores Limited [for short, 'IMPCOPS'] and also the validity of the amendment made to bye-law No.7 regarding the membership.

4. IMPCOPS, the third respondent in the first writ petition, viz., W.P.No.19992 of 1998, was registered under the Madras Act VI of 1932. As its area of operation was extended throughout the country, it came to be registered under the Multi State Co-operative Societies Act 1984 [for short, '1984 Act']. As per the bye-laws of the Society registered with the Central Registrar of Co-operative Societies, the main objects of the Society are to manufacture Indian medicines of high quality under expert supervision and direction and to supply to the needs of the members in respect of prepared medicines, raw materials and appliances required by them as well as to open branches and depots for the sale of medicines, raw materials to its members. As per the original bye-laws, bye-law No.7 provided for the qualification of membership and it was made that each member should have minimum five shares for being a member of the Society.

5. According to the averments made in W.P.No.19992 of 1998, there were over 12,000 members in the IMPCOPS and for the purpose of electing members to the Board of Directors, each constituency will have to elect two directors and as per the procedure followed, each member will have to cast 14 votes to elect 14 Board of Directors from the various constituencies. However, on 19.7.1992, a resolution was passed in the general body and bye-law No.7 was amended, which reads as follows:-

> "Every member shall take at least fifty shares; but no member shall take more than 1,000 shares. Every member shall pay an entrance fee of twenty five paise for each share taken by him / her at the time of taking the share provided that the total payment of entrance fees by any one member for all the shares held by him / her shall not exceed Rs.5."

6. This amendment was sent to the Central Registrar of the Co-operative Societies at New Delhi and was also registered with effect from 14.01.1993. The majority of the members did not acquire the minimum shares prescribed and, therefore, the IMPCOPS, by a resolution

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dated 16.11.1994, permitted all the members to vote in the election irrespective of the number of shares held by them and further resolved to remove those members, who did not acquire minimum of 50 shares on or 31.12.1995. Therefore, when the election was held on 23.9.1995 for the Board of Directors to the IMPCOPS, all the members were allowed to vote irrespective of the shares held by them. But, however, due to the advise of the Joint Registrar, the resolution was not given effect as many of the members did not acquire the higher shares. As on 08.8.1998, only 4012 members acquired 50 shares. This is roughly less than 1/3rd of the total membership of the IMPCOPS. In that election, one Dr.Kumaradas was elected as the President of the IMPCOPS. Thereafter, certain disputes took place among the Directors and certain Directors passed a resolution removing Dr.Kumaradas from the post of President and elected Dr.Pandarinath as President.

7. It was during the year 1998, the Board of Directors sought the advise of the Joint Registrar as to whether all the members must be allowed to participate in the election or only persons, who acquired more than 50 shares, should be allowed to vote. It is stated that after getting the opinion of the Joint Registrar, an election notification dated 16.11.1998 was issued permitting only those who were holding 50 shares and above, to vote. The then President Dr.Kumaradas for inexplicable reasons did not contest in the election but got himself nominated as a Returning Officer for the said election held during 12/98.

8. Protesting against this exclusion of more than 2/3rd of the membership, one Dr.M.Vinobaji filed W.P.No.19992 of 1998 and challenged the proceedings of the Central Registrar dated 18.01.1993 in registering the amendment to bye-law No.7. Pending the challenge, he also sought for interim stay of all further proceedings pursuant to the election notification dated 16.11.1998, which was conducted as per the amended bye-laws.

9. This Court, while admitting the writ petition, granted an interim order on 17.12.1998 staying the further proceedings. Thereafter, after hearing the parties, by a reasoned order dated 27.01.1999, certain orders were passed by this Court and the following directions are relevant for this case:-

Para 11: "After having heard Learned Counsel on both sides, I feel that the interim order passed by me on 17.12.1998 in W.P.No.19992 of 1998 will have to continue until further orders.

Para 12: Regarding the arguments that petitioners have got alternative remedy by way of appeal, prima facie I feel, taking into consideration the facts of this case, that the alternative remedy is not effective. On going by the provisions of the Bylaws, I feel that the petitioners have got a prima facie to urge before this Court.

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Para 13: The submission of the learned Additional Government Pleader that the elected office bearers may be permitted to assume charge, and they will surrender the post if the Court allows the writ petitions, cannot be accepted. Under the Multi-purpose Co-operative Societies Act, there is a provision that the office bearers already elected and who are in office can continue to hold the same till the new office-bearers assume charge. So, there is no hardship to the Society.

Para 14: If it is ultimately found that the petitioners were not properly elected, the Management by them, at least for certain period, will be illegal. On a reading of the By laws and also the Amendment, I prima facie feel that the Amendment is only prospective, and the same cannot affect the existing members. I find that petitioners who are entitled to vote, have been denied their right. I also prima facie find that there are inconsistencies with the existing Bylaws and the Amendment.

Para 15: Since I hold that the petitioners have got a prima facie case and grounds have been made out by them for getting an interim order, I confirm my Order dated 17.12.1998 in W.P.No.19992 of 1998. The elected Office-bearers will not assume charge till the disposal of the writ petition."

By virtue of the interim order, passed by this Court, the said Dr.Kumaradas, who acted as a Returning Officer in the election impugned, continued to act as the President of the Society as he was the outgoing President before the new elections were held.

10. Thereafter, three writ petitions being W.P. Nos. 703 of 1999, 704 of 1999 and 820 of 2007, were filed by three different petitioners seeking to quash the Certificate of Registration of the amendment to the bye-laws dated 14.01.1993 as well as to set aside the election notification dated 16.11.1998. In these three writ petitions, the said Dr.Kumaradas was shown as the fourth respondent. Thereafter, it seems as if everyone has forgotton about the successive elections as the erstwhile Board of Directors continued in view of the pendency of the writ petition and the interim order. No steps were taken to get the writ petition disposed of and the directors, who were elected in the election held on 19.12.1998 [hereinafter referred to as '12/98 election'] were not allowed to resume office as were elected under the amended bye-laws. In the meantime, it appears, there was a strike by the workers engaged by IMPCOPS, who demanded the removal of the President Dr.Kumaradas and the then Board of Directors apparently passed a resolution of no-confidence against the President, which was communicated to him by a letter dated 13.11.2006.

11. The said Dr.Kumaradas filed a writ petition being W.P.No.43810 of 2006 challenging the resolution passed in that meeting. However, the said writ petition was dismissed directing him to avail alternative

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remedy provided under the 1984 Act. Apparently, the said Dr.Kumaradas raised an arbitration dispute before the Central Registrar by invoking Section 9 of the Arbitration and Conciliation Act. He filed an application surprisingly before the Delhi High Court and his petition was numbered as O.M.P. No.554 of 2006. The Delhi High Court, vide order dated 27.11.2006 granted status quo ante as on 11.11.2006. The Delhi High Court passed a final order on 23.01.2007 allowing the application filed by Dr.Kumaradas and held as follows:

> " The respondents are consequently restrained from giving effect to the removal of the petitioner as communicated to the petitioner in the letter dated 13th November 2006 issued by the respondent No.4. The parties shall maintain status quo as existing on the 11th of November 2006.
>
> The petitioner has claimed a right to continue in office by virtue of order dated 27th January, 1999. It is made clear that the present order shall continue to operate till such time the order dated 27th January 1999 is varied, modified or set aside by any court."
>
> [Emphasis added[

12. The challenge to the said order by certain persons by taking the matter before the Division Bench of the Delhi High Court had failed. While their appeal was admitted, interim stay application was dismissed by an order dated 02.3.2007 by the Delhi High Court. Therefore, the continuance of the said Kumaradas has now been made subject to the finality of the order to be passed in W.P No.19992 of 1998.

13. In the meanwhile, the said Dr.Kumaradas filed W.P.No.6326 of 2007 in the name of IMPCOPS represented by him, seeking for permission to give Police protection for himself and the other Board of Directors to attend the meeting fixed on 21.02.2007 and other subsequent dates. When that writ petition came up for admission on 22.02.2007, notice was taken by all the respondents and the learned Judge passed the order directing the writ petition to be posted along with the above batch of cases. That is how, all these writ petitions are grouped together and posted before this Court.

14. These matters were heard 28.3.2007 and 29.3.2007. When the matter was taken up, Mr.M.Krishnappan representing Ms.Swarnalatha, learned counsel appearing for the petitioner in W.P.No.6326 of 2007, stated that since the main writ petition has been taken up for final hearing, he is not pressing the writ petition and he wants the Court to dismiss the writ petition. However, Mr.F.B.Benjamin George, learned counsel, who is not appearing for any other party in the said writ petition stated that he is opposing the dismissal of the W.P.No.6326 of 2007. When a learned counsel (Mr.M.Krishnappan), who is fairly senior in the bar, makes a statement, it must be presumed that he makes the statement with full responsibility. The said statement will have to be accepted. Further, it is open to any party which filed a

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petition to withdraw the same at any time unless the affected party makes a complaint that certain orders were obtained against them and they are prejudiced by the withdrawal of the petition.

15. In this context, it is relevant to quote the decision reported in AIR 1981 SC 1725 [Shaik Hussain and sons vs. M.G.Kannaiah] wherein the Supreme Court has observed that when the writ petitioner himself wanted to withdraw the petition and had even given good reasons, the High Court is not justified in considering that application and passing orders thereon. Hence, notwithstanding the objection raised by the counsel, who is not appearing for any party in W.P.No.6326 of 2007, the said writ petition shall stand dismissed. Consequently, connected Miscellaneous Petition will stand closed.

16. However, when the matter was taken up for hearing, Mr.Nagasagayam, learned counsel appearing for the petitioner in W.P.No.19992 of 1998 stated that he also wants to withdraw his petition. This was objected to by certain other counsels because it was stated that if the writ petition is dismissed, then naturally, the Board of Directors who were elected in the 12/1998 election, will have to assume charge. That will defeat the very purpose of the interim order dated 27.01.1999 passed by this Court. The said Dr.Kumaradas, who also acted as a Returning Officer, also protested against the dismissal of the writ petition because his removal from office by other Board of Directors and his continuance or otherwise, which was restrained by the orders of the Delhi High Court, was made conditional to the final outcome of the said writ petition. Therefore, the dismissal of the writ petition means his automatically losing his so-called right to continue to act as the President of the IMPCOPS as under proviso to Section 35(3) of the 1984 Act, his continuance is guaranteed. However, as there are other writ petitions, which also raised same issues, i.e., about the validity of the amendment made to the bye-laws and also the right of the Board members elected at the 12/1998 election, to take charge has to be determined so that a compendious order can be passed by this Court.

17. Though the matters were extensively argued by all the learned counsels, it was suggested to all the counsels appearing for various parties as to the imperative need for conducting a fresh election especially, for two reasons. One is that the last election was held in December 1998 and subsequently, even if certain persons were elected as office bearers, their terms would have been over since the term of office contemplated is only a period of three years as per bye-law No.26 of IMPCOPS and by now, at least two elections should have been conducted after the 12/98 election and the third election will be due in December 2007.

18. It was also pointed out by this Court that during the pendency of the writ proceedings, the Parliament has enacted Central Act 39 of 2002 [for short, '2002 Act'] and the same has come into force and the 1984 Act has also been repealed. The purpose and object of the 2002 Act have been mentioned in the preamble portion of the said Act, which

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reads as follows:

> "An Act to consolidate and amend the law relating to co-operative societies, with objects not confined to one State and serving the interests of members in more than one State, to facilitate the voluntary formation and democratic functioning of co-operatives as people's institutions based on self-help and mutual aid and to enable them to promote their economic and social betterment and to provide functional autonomy and for matters connected therewith or incidental thereto."
>
> [Emphasis added]

19. Further, the first schedule to the said Act prescribed under Section 3(g) sets out the co-operative principles that are expected under the new enactment and paragraph 2 of the First Schedule reads as follows:

> "2. Democratic Member Control.-- Co-operatives are democratic organisations controlled by their members, who actively participate in setting their policies and decision making. Elected representatives of these co-operatives are responsible and accountable to their members."

20. In the light of the above, this Court suggested that fresh elections should be held at all costs and it should be conducted by a person, who is not a member of the Society. Further, taking note of the fact that there has been a litigation for over ten years by different groups on the said issue and in order to give quietus to the same, this Court may request a retired High Court Judge to conduct the elections and after the said election, entrust the affairs to the newly elected Board of Directors. The 2002 Act under Rule 19(2) appends a Schedule by which procedure for conduct of elections to the Board of Multi State Co-operative Society has been prescribed. In that, Rule No.1(a) contemplates appointment of a Returning Officer by the Board of Directors. Further, Section 45(6) of the 2002 Act clearly states that if the Board fails to conduct election of the members of the Board, the Central Registrar shall hold the election within a period of 90 days from the date when such election became due. This suggestion was accepted by all the counsels appearing for the parties and it was also stated that this Court can nominate a retired Judge to conduct and supervise the election. However, the learned counsels appearing for both the old set of Directors and the directors, who were elected at the 12/98 election, pleaded that they should be associated with the conduct of election as it is the prerogative of the Board of the Directors to conduct elections and nominate the Returning Officer. If this Court nominates a retired Judge, then the Board alone should be involved in the process of conducting the election and they should be completely taken into confidence by the Court appointed Commissioner.

21. The Supreme Court in a more or less similar stand off between two sets of members in a Multi-State Co-operative Society ordered for an

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election to be conducted by the Central Registrar. The said decision is reported in AIR 1997 SC 1801 [Goa State Co-operative Bank Ltd. vs. Pedne Taluka Prathamik Shikshak Pat Saunstha Ltd. and others]. In paragraphs 6 and 7, it was stated as follows:

Para 6: "Shri Anil B.Divan, the learned senior counsel appearing for the appellant, has brought to our notice the procedure applicable to the conduct of elections to the Societies as envisaged in Rule 104 and Schedule II of the Multi-State Co-operative Societies (Registration, Membership, Direction and Amendment, Settlement of Disputes, Appeal and Revision) Rules 1985 (for short, "the Rules"). He contended that election to the Society should be conducted as per rules. Shri Khanwilkara, learned counsel appearing for the respondent, contended that after the amendment of the Bye-laws a controversy has arisen as to what is the relevant rule with reference to which election is to be conducted. We desist to go into the controversy for the reason that the election to the Society has yet to be conducted. It is axiomatic that the election requires to be conducted by the 7th respondent in accordance with the relevant Rules and the Bye-laws of the Societies applicable as on the date of the election. Therefore, it is for the 7th respondent to conduct the elections in accordance with the relevant rules as applicable to the Society in tune with the Bye-laws of the appellant – Society as applicable to the Society.

Para 7: The appeal is accordingly allowed. The judgment and order of the High Court stands set aside. The operative portion of the judgment also stands set aside. The Registrar is directed to conduct the elections in accordance with the relevant rules applicable to the Society, Bank and Bye-laws on the Society, the Act as also the Rules applicable as on the date of conducting of the elections."

22. The further difference of opinion that was raised was on the question of what should be the criteria for the voting right and the full import of bye-law No.7 in its amended form. It was also stated that the amendment to bye-law No.7 should be declared invalid and that the members having shares less than 50 shares must also be eligible to participate in the election and this issue should be resolved by this Court. Therefore, arguments were addressed on the question of the validity of the amendment made by the general body vide its meeting held on 14.01.1993 and accepted by the Central Registrar which are impugned in certain writ petitions.

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23. bye-law No.7 before and after the amendment are as follows:-

Old bye-law	New bye-law
Every member shall take at least five shares; but no member shall take more than 1,000 shares. Every member shall pay an entrance fee of twenty five paise for each share taken by him at the time of taking the share provided that the total payment of entrance fees by any one member for all the shares held by him shall not exceed Rs.5.	Every member shall take at least fifty shares; but no member shall take more than 1,000 shares. Every member shall pay an entrance fee of twenty five paise for each share taken by him / her at the time of taking the share provided that the total payment of entrance fees by any one member for all the shares held by him / her shall not exceed Rs.5.

24. It is undoubtedly true that the bye-laws of any Society can be amended by the General Body of the said Society and it can also prescribe the criteria for membership. Under the 1984 Act, Section 8 provides for amendment of the bye-laws. Under the 2002 Act, Section 11 provides for the similar provision. Under both the enactments, the said bye-laws comes into operation on the day indicated by the Society after the registration Certificate has been granted by the Central Registrar.

25. In the present case, the bye-laws were certified by the Central Registrar vide his Certification dated 14.01.1993. It is this Certification, that has been challenged in W.P.Nos.703 of 1999, 704 of 1999 and 820 of 2007. Therefore, certain learned counsels raised a preliminary objection that the challenge to the bye-laws was improper as it has been challenged after a period of six years in two cases and after a period of fourteen years in the last case and this Court should not allow the belated writ petitions. It is also argued that as against the said amendment as well as the election to the Society, a machinery to settle the disputes has been prescribed under Section 74 of the 1984 Act and, therefore, aggrieved parties should have approached those forums and not file petitions under Article 226 of the Constitution of India is not a remedy.

26. Per contra, the writ petitioners in these writ petitions submitted that there was no occasion for them to challenge the said amended bye-laws during 1993 because in the general body meeting held on 16.11.1994, wherein persons, who had less than 50 shares, were also allowed to vote and it is only during October 1998, when the Board of Directors resolved to disqualify nearly 2/3rd membership and excluded them from voting and consequently, when they issued the election notification, the cause of action arose and they were forced to file the writ petitions in the year 1999 and there was actually no delay. In

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any event, it was argued that the criteria for holding membership even it can be varied, it can come into force only prospectively, viz., on the admission of new members, and by no stretch of imagination, the existing members can be edged out from their membership. In essence, the Society cannot commit 'harakiri' (self-killing) by making the majority to go out of the IMPCOPS. Unless the provision is found either in the Act or under Rules or under bye-laws, their right to continue as a member cannot be taken away by the reason of having lesser shares or they cannot be denied their voting right.

27. In effect, the learned counsels argued that bye-law No.7 prescribes different ownership of shares by prescribing minimum and maximum and it does not create different classes of membership. They also drew the attention of this Court to Section 3(n) read with Section 33 of the 2002 Act providing for restriction on holding of shares. Further, attention was also drawn to Section 31 under which every member of a multi-State shall have one vote in the affairs of the Society and unless a member is disqualified, his right is guaranteed. It is not the case that by virtue of Section 26, a nominal or associate member of society is provided in IMPCOPS which disentitles them from voting in the election. Unless the members who are holding shares less than 50 are now expelled from the Society, nor they are statutorily disqualified by the Act and Rules, their right to vote is guaranteed. This submission merits acceptance because it is one thing to say as to number of shares a person must hold for having membership in the Society and it is another thing to deny his right to vote in any election. All the members who have made an application and subscribed to the bye-laws, are entitled to vote unless in terms of Section 26 different classes of membership are created by the Society.

28. It is not the case of the IMPCOPS that either an associate member or nominal membership has been granted. In fact, even after the said resolution certified by the Registrar, by the resolution of the general body dated 16.11.1994, all the persons, who are having less than 50 shares were also allowed to vote in the election held on 23.9.1995. From this, it can be presumed neither the board nor the general body wanted to disqualify any member from voting only on the ground that they did not hold minimum shares. Even if it was stated that to enable members and to grant opportunity to acquire higher shares the resolution was passed, it can be safely said that such a decision either by the general body or the board can never be permitted. If the intention was to disqualify members from voting, then such a disqualification had come into force from the date the registration of the amendment by the Central Registrar, viz., 14.01.1993. In any event, in no other provision in the bye-laws or in the Act or in the Rules (both under the 1984 Act and 2002 Act) such a disqualification has been prescribed.

29. As rightly contended by the writ petitioners, at the maximum, this can be a criteria for new membership and the existing members can never be edged out from the membership of IMPCOPS unless they suffer any other disqualification. Therefore, this Court is of the opinion that

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the amendment made to bye-law No.7 need not be set aside and it is validly made. But the understanding of the IMPCOPS and its erstwhile Board of Directors is that the amendment deprives membership and denies voting right is totally erroneous and contrary to the spirit under which the Multi-State Co-operative Societies Act has been made. Therefore, it is hereby declared that notwithstanding the amendment to bye-law 7 (which has only been a prospective application), no person, who is a member of the Society, whether has a share of 50 or below as on 14.01.1993, shall be disqualified from voting in any election and is further declared that the amendment will have only prospective effect, viz., it will apply only to a person who seeks new membership. The existing members can never be disqualified from voting in any election.

30. However, Mr.T.Mohan, learned counsel referred to Section 20 of the 1984 Act, which reads as follows:

> "No member of a multi-State co-operative society shall exercise the right of a member, unless he has made such payments to the society in respect of membership, or has acquired such interest in the society, as may be specified in the bye-laws." [Emphasis added]

31. The learned counsel also contended that non-acquiring of a higher share holding would amount to not making payment to the Society in respect of membership and, therefore, they cannot exercise their right until due payment is made. It was countered by stating that this section will apply only to arrears of subscription and other dues and has got no relevance to acquisition of higher share holding. Further, it was submitted that the second portion found in Section 20, viz., "has acquired such interest in the Society", as may be specified in the bye-laws, would mean acquiring higher share holding. The bye-laws are silent as to which are the interests, which could disqualify members from exercising their right apart from the statutory disqualification provided under the Act. Further, any interpretation has also to take into account the objects and reasons found in 2002 Act as well as the definition of democratic principles which are extracted elsewhere in this order. The thrust is for democratic functioning and not to edge out original members of the society by some strange general body resolutions thereby allowing the Society to become a pocket borough of a select few.

32. Since this Court has held that the amendments made in the year 1993 and certified by the Registrar will not disqualify any member from voting in the election, naturally, the elections held during 12/98 is illegal. Even if this Court has come to the conclusion that the request of the counsel for the petitioners in W.P.No.19992 of 1998 is accepted and the said writ petition is dismissed, the similar questions have arisen in W.P.Nos.703 of 1999, 704 of 1999 and 820 of 2007. Therefore, the issue has been kept alive and the Court is bound to answer the same. This Court is not willing to dismiss the writ petitions only on the ground of delay since all these writ petitions have been filed during the pendency of the 1998 case and the cause of

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action for challenging the same has arisen only when 2/3rd of members were disqualified from voting in 12/98 election. Only on the basis of machineries provided under the Act under Sections 74 and 90, they cannot be driven to the machinery at this stage. Further, the various items for which the appeals are provided under Section 90 of the 1984 Act do not find a place under Section 99 of the new Act. Therefore, this Court is rejecting the objections regarding alternative remedy and delay in approaching this Court.

33. The only question now remains to be answered is the mode and method of conducting the elections. The order of the Delhi High Court obtained by Dr.Kumaradas has been made subject to the result of the interim order passed by this Court on 27.01.1999. Therefore, if the said writ petition is dismissed, even the interim order will come to an end. The learned counsel for the petitioner in this writ petition states that he is not pressing the writ petition for the reasons stated in paragraph 15. This writ petition deserves to be dismissed. Even in the writ petition filed by Dr.Kumaradas in W.P.No.43810 of 2006, this Court vide order dated 14.11.2006, has only directed him to approach the Central Registrar with reference to his prayer for declaration that the meeting of the Board of Directors held on 11.11.2006 is illegal. Therefore, the said Dr.Kumaradas cannot be associated in conducting the election in his capacity as an erstwhile President. At the same time, the Board of Directors elected after illegally excluding of 2/3rd members held during 12/98 has no right to claim to hold their so-called office during the interregnum period, viz., from now onwards till the election is held.

34. Under these circumstances, this Court holds that in view of the fact that the IMPCOPS, being an important Society involved in the manufacture and distribution of various Indian Medicines, new election should not brook any delay and the office must be handed over to whosoever is elected as Board of Directors. Therefore, in the interest of the Society and its future welfare, this Court issues the following directions:

(a) Justice S.S.Subramani, retired Judge of the High Court, Madras, is hereby appointed as the Court Commissioner to conduct the elections to the Board of Directors to the IMPCOPS in terms of the bye-laws of the Society.

(b) The Secretary of the IMPCOPS and all his subordinates will render necessary assistance to the Court Commissioner in the smooth conduct of the election.

(c) The Court Commissioner is entitled to appoint one more person of his choice to help him in the conduct of elections.

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(d) All the members, who are on the rolls as on 14.01.1993 excepting those who are not alive or resigned, notwithstanding the fact whether they have 50 shares or less, are entitled to vote in the election.

(e) The Court Commissioner shall prepare the approved voters' list and publish the same and also issue the election notification within the time frame prescribed and conduct the election. If any dispute is raised by any party, that can also be provisionally determined by the Court Commissioner.

(f) The Commissioner of Police, Chennai, is hereby directed to render all necessary assistance including personal security to the Court Commissioner and also provide enough police bandobust as requested by the Court Commissioner in the conduct of elections.

(g) The IMPCOPS is directed to make a payment of Rs.50,000/- to the Court Commissioner within a period of two weeks from today as his initial fee and the final fee for the Commissioner, his deputy as well as expenditure incurred by them will be ordered subsequently by this Court.

(h) The parties are directed to co-operate with the Court Commissioner so that the democratic functioning of the IMPCOPS as well as its continued service to the Society is assured.

(i) A report shall be submitted to this Court by the Commissioner after the election results are declared.

35. In the light of the above, W.P.No.6326 of 2007 shall stand dismissed. W.P.Nos.19992 of 1998 is dismissed as not pressed. All other writ petitions shall stand disposed of except to the extent indicated above. However, there will be no order as to cost. Consequently, connected Miscellaneous Petitions in the all these writ petitions will stand closed.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To

1. Central Registrar of Co-op. Societies
   Krishi Bhavan
   Dr.Rajendra Prasad Road
   New Delhi - 110 001

2. The Joint Registrar of Co-op. Societies
   Chennai Region
   Saidapet
   Chennai - 15

3. The Secretary
   The Indian Medical Practitioners'
   Co-op. Pharmacy and Stores Ltd.
   34-37 Dr.Muthulakshmi Road
   Thiruvanmiyur
   Chennai - 41

4. Mr.Justice S.S.Subramani
   Retd. Judge
   High Court, Madras
   E-104 (11/2) 23rd Cross Street
   Besant Nagar
   Chennai - 600 090

5. The Commissioner of Police,
   Greater Chennai, Egmore, Chennai 8.

6. The Deputy Commissioner of Police,
   Adayar Range, Chennai 20.

7. The Assistant Commissioner of Police,
   Adayar Range, Adayar, Chennai 20.

8. The Inspector of Police,
   J-6, Thiruvanmiyur Police Stateion,
   Chennai 41.

9. Labour Progressive Front,
   IMPCOPS, Thiruvanmiyur,
   Chennai 41.

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+ 1 CC To Mr. F.B.Benjamin George, Advocate SR NO.22208
+ 1 CC To Mr. V.Perumal, Advocate SR NO.22276
+ 1 CC To Mr. M.Ravi, Advocate SR NO.22600
+ 1 CC To Mr. P.Wilson, Asst. Solicitor General of India, Advocate SR NO.22653

W.P. Nos.19992 of 1998, etc. batch

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